

New Legal Issues for Counties and Landowner's with Wind Farming in Kansas



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Smoky Hill Wind Project

- Project Developer – TradeWind Energy, LLC
- Project Ownership – Enel North America, Inc. the wholly owned subsidiary of Enel, SpA.
- Project Location – Just north of I-70 on both sides of highway 14. In Lincoln and Ellsworth Counties
- Project Size – 250 MWs (phase I/phase II)

What do you do when a developer has interest in your county?

- Zoned?
- Who is the developer?
- Where is the wind farm to be located?
- No magic book for any county.



County Concerns

- PILOT Agreement
 - Payment in lieu of tax payments made to the County
 - Statutory Authority
 - Lincoln County “WEB” Fund
 - The proposal is a five person board consisting of a Board of County Commissioners, a member from Economic Development, and three members from each commissioner district appointed by the Lincoln County Board of County Commissioners

- Discrepancy between payments made by wind developers to counties:
 - Barber County
 - Gray County
 - Ford County
 - Butler County
 - Wichita County
 - Lincoln County - \$400,000 1st year and \$300,000 per year renewal for 100.8 mw – additional monies as mw increase
 - Ellsworth County – same as Lincoln County

- There is no rule regarding regulating authority regarding PILOT agreements and their amounts.



Response by Counties

- Ordinance – require notification to the County.
- Zoning
- Taxes

Road Maintenance Agreement and the Impact on the County

- Easements/Permits
- Improvements to the Roads and Easements of the County
 - This issue continues to be a big concern for counties of any size.

Landowner's What are we seeing?

- Similarities
 - Initial Lease Period
 - Pre development (2-7 years)
 - Construction Period (1 year)
 - Operation (25-150 years)

- Royalties – 2% to 6%
 - Inflationary Provisions
 - Mix of royalty and graduated minimum payment

- Hunting Provisions
- Access
- Confidentiality
- Decommissioning
- Payments



- Lease Agreements cover every issue over the life of the project.



Development Agreement

- Difficult – making decisions about issues 5-7 years down the road.
- All-inclusive
 - PILOT
 - Road Maintenance
 - County Obligations

Balancing Act

- Developer Needs
- Landowner Notice
- County Requirements
- Line Availability

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